

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

July 16, 2004

GSBCA 16395-RELO

In the Matter of DONALD P. KRUMP

Donald P. Krump, Prairie du Chien, WI, Claimant.

Kristine M. Chadwick, Director, Financial Management Division, Farm Service Agency, Department of Agriculture, Washington, DC, appearing for Department of Agriculture.

GOODMAN, Board Judge.

Claimant, Donald P. Krump, is an employee of the Department of Agriculture. He has requested this Board to review the agency's denial of his claim for damages arising from the agency's refusal to permit his participation in a relocation service program (RSP) during his permanent change of station (PCS).

Background

In July 2002, claimant was relocated from his old duty station in Fort Collins, Colorado, to his new duty station in Prairie du Chien, Wisconsin. The agency admits that the claimant was erroneously denied participation in the RSP. Claimant seeks damages in the amount of \$18,000, plus interest at the prevailing rate from the date of sale of his home at the old duty station, as a result of not being allowed participation in this program. Claimant calculates his damages as follows:

Since I did not have the RSP to fall back on I was forced to reduce the price of my home substantially in order to sell it quickly. . . . This resulted in a sales price of approximately \$18,000 less than I would have received had I not been denied the use of the RSP, based upon the market analysis done by our listing realtor . . . which indicated a fair market value of approximately \$225,000.

Claimant also states that because he was not allowed to participate in the RSP, his house hunting trip was delayed several weeks and his family had to live in temporary quarters at the new duty station. Additionally, the reimbursement of real estate transaction costs he received from the agency as a result of the sale of his residence at the old duty station was

included in his income, which affected his Individual Retirement Account contributions and resulted in the withholding of excess Social Security taxes from his wages, which required several hours to rectify with the assistance of the Social Security Administration.

While the agency admits that claimant was erroneously denied participation in the RSP, it states:

There are no provisions in the Federal Travel Regulation[s] [FTR] that permit reimbursement for financial damages when an employee sells his home at less than he desired. Mr. Krump has received all that he is due from the Federal Government via reimbursement for real estate expenses incurred from the sale of his home.

Discussion

Federal agencies are permitted to enter into relocation services contracts with private firms to provide a variety of relocation services to employees who are transferred. These services include arranging for the purchase by the relocation services contractor of a transferred employee's residence at the old duty station under a home sales program. 5 U.S.C. § 5724c (2000); 41 CFR pt. 302-12 (2002); Gregory R. Littin, GSBCA 15564-RELO, 01-2 BCA ¶ 31,604.

In this case, claimant seeks what he alleges are damages arising from the agency's admitted failure to allow claimant to participate in the RSP, in which claimant was entitled to participate. The agency admits its error, asserts that claimant has been reimbursed for his costs incurred in the sale of his home at the old duty station pursuant to applicable regulations, and asserts that no further reimbursement is due.

In a similar situation, John V. Duncan, GSBCA 15230-RELO, 00-2 BCA ¶ 30,950, we found that an employee of the same agency was unjustifiably denied participation in an RSP because of an agency-imposed limitation that was contrary to regulation. Even so, the employee was not entitled to an award of damages. We held as follows:

We therefore conclude that [the agency] had no justification for denying [the claimant's] request . . . to avail himself of the help from a relocation services contractor in selling his old residence.

Unfortunately for the claimant, however, our agreement with him on this hotly-debated point and in finding that the agency's responses to his inquiries were disgracefully slow cannot result in an award of what he is really looking for - money. The Board has the authority, under delegation from the Administrator of General Services, to exercise the Administrator's power to settle claims involving relocation expenses incurred by federal civilian employees. . . . We understand this charge to restrict our ability to award money to the kinds and amounts of expenses prescribed by relevant statutes . . . and regulations (such as the FTR and the Agriculture Travel Regulation). [citations omitted]. Damages resulting from an agency's failure to act

promptly or in accordance with relevant regulations do not fit within this category.

00-2 BCA at 152,770.

Similarly, in the instant case, the agency has no justification for claimant's non-participation in the RSP. Even so, as explained in Duncan, this Board does not have the authority to award damages resulting from an agency's failure to act promptly or in accordance with relevant regulation.

Decision

The claim is denied.

ALLAN H. GOODMAN
Board Judge